

SECTION-BY-SECTION SUMMARY OF H.R. 1088

Section 1. Gives the short title of the Act, the “Investor and Capital Markets Fee Relief Act.”

Section 2. Reduces in fiscal 2002 the Section 31 fee rate applicable to securities transactions on exchanges and in the over-the-counter market and the assessment on security futures transactions on exchanges.

- The Section 31 fee rate on securities transactions is reduced by 64% in fiscal 2002 (from the current rate of 1/300th of 1 percent, or \$33.33 per million, to \$12 per million of the dollar amount of securities transactions).
- The Section 31 assessment on security futures transactions also is reduced by 64% in fiscal 2002 (from the current \$0.02 to \$0.0072 per round turn transaction).

Section 3. Provides a mechanism for adjusting the Section 31 fee rate on securities transactions after fiscal 2002, and makes an additional reduction to the Section 31 assessment on securities futures transactions.

- All Section 31 fees and assessments are converted to offsetting collections, with no fees credited as general revenue of the Treasury.
- The bill includes a mechanism to adjust the fee rate on securities transactions each year from fiscal 2003 through 2011 so that the rate, when applied to an estimate of the total dollar volume of securities transactions for a given year, is reasonably likely to produce collections equal to a target amount for that year.
 - The target amounts for fiscal 2003 through 2011 are fixed in the bill at levels that (based on current projections of total dollar volume) will result in a rate of \$12 per million from fiscal 2003 through 2006 (versus \$33.33 per million under current law), and a rate of \$7 per million from fiscal 2007 through 2011 (versus \$12.50 per million under current law).
 - The SEC will determine the estimate of the total dollar volume of securities transactions in a given year, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology that the Congressional Budget Office uses to make projections under the Balanced Budget and Emergency Deficit Control Act of 1985.
 - Tying the adjustment mechanism to each year’s target amount has the effect of decreasing (or increasing) the Section 31 fee rate on a yearly

basis depending on the estimated total dollar volume of securities transactions for the year. In other words, any unexpected increase in the projected dollar volume of securities transactions will lead to a reduction in the Section 31 fee rate to meet the target amount.

- The SEC will perform the task of setting the fee rate each year. The fee rate will be set by order and published in the Federal Register (along with the underlying estimates or projections on which the rate is based) not later than April 30 prior to the start of each fiscal year. The setting of the fee rate will be a ministerial task (determined by dividing that year's estimate of the total dollar volume of securities transactions by that year's statutory target amount), and will not be subject to judicial review.
- The adjusted rate will go into effect on the later of the first day of the fiscal year or 30 days after a regular appropriation for the SEC has been enacted. If a regular appropriation has not been enacted on the first day of the fiscal year, the SEC will collect fees at the rate in effect during the prior fiscal year until the new rate goes into effect.
- There is one "final rate adjustment" to set the Section 31 fee rate after fiscal 2011. Specifically, for fiscal 2012, the SEC will adjust the rate so that the rate, when applied to the estimate of the total dollar volume of securities transactions in fiscal 2012, is reasonably likely to produce the target amount for fiscal 2011 (the prior fiscal year). This adjustment is intended to create additional, permanent fee relief. The final rate adjustment for fiscal 2012 will apply to all subsequent fiscal years.
- The assessment on security futures transactions also is reduced an additional 44% in fiscal 2007 (from \$0.0075 under current law to \$0.0042 per round turn transaction).

Section 4. Reduces the fee rate under Section 6(b) of the Securities Act of 1933 that applies when companies register their securities with the SEC.

- The section converts all Section 6(b) fees on the registration of securities to offsetting collections, with no fees credited as general revenue of the Treasury.
- The Section 6(b) fee rate on the registration of securities is reduced in fiscal 2002 (from \$239 per million to \$125 per million of the maximum offering price at which securities are proposed to be offered).
- For each of the fiscal years 2003 through 2011, the Section 6(b) rate will be adjusted to a rate that, when applied to an estimate of the aggregate maximum offering price at which securities are proposed to be offered during the year, is

reasonably likely to produce collections equal to a specified target amount for that year.

- The target amounts for fiscal 2003 through 2011 are fixed in the bill so that there will be an aggregate reduction in projected Section 6(b) fee collections of 28% over ten years.
- The SEC will determine the estimate of the aggregate maximum offering price at which securities are proposed to be offered during a given year, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology that the Congressional Budget Office uses to make projections under the Balanced Budget and Emergency Deficit Control Act of 1985.
- Tying the adjustment mechanism to each year's target amount has the effect of decreasing (or increasing) the Section 6(b) fee rate on a yearly basis depending on the estimate of the aggregate maximum offering price at which securities are proposed to be offered during a given year. In other words, any unexpected growth in projected registered offerings will lead to a reduction in the Section 6(b) fee rate to meet the target amount.
- The SEC will perform the task of setting the fee rate each year. The fee rate will be set by order and published in the Federal Register (along with the underlying estimates or projections on which the rate is based) not later than April 30 prior to the start of each fiscal year. The setting of the fee rate will be a ministerial task (determined by dividing that year's estimate of the aggregate maximum offering price at which securities are proposed to be offered during the year by that year's statutory target amount), and will not be subject to judicial review.
- The adjusted rate will go into effect on the later of the first day of the fiscal year or 5 days after a regular appropriation for the SEC has been enacted. If a regular appropriation has not been enacted on the first day of the fiscal year, the SEC will collect fees at the rate in effect during the prior fiscal year until the new rate goes into effect.
- There is one "final rate adjustment" to set the Section 6(b) fee rate after fiscal 2011. Specifically, for fiscal 2012, the SEC will adjust the rate so that the rate, when applied to the estimate of the aggregate maximum offering price at which securities are proposed to be offered during fiscal 2012, is reasonably likely to produce the target offsetting collection amount for fiscal 2011 (the prior fiscal year). This adjustment is intended to create additional, permanent fee relief. The final rate adjustment for fiscal 2012 will apply to all subsequent fiscal years.

Section 5. Reduces the fee rate under Section 13(e) of the Securities Exchange Act of 1934 that applies to stock repurchase statements filed with the SEC in connection with “going-private” transactions.

- The section converts all Section 13(e) fees to offsetting collections, with no fees credited as general revenue of the Treasury.
- The Section 13(e) fee rate on the repurchase of securities is in fiscal 2002 from 1/50th of one percent, or \$200 per million, to \$125 per million of the value of securities proposed to be purchased.
- After fiscal 2002, the fee rate will be adjusted by Commission order to equal the fee rate under Section 6(b).
 - The adjusted rate will go into effect on the later of the first day of the fiscal year or 5 days after a regular appropriation for the SEC has been enacted. If a regular appropriation has not been enacted on the first day of the fiscal year, the SEC will collect fees at the rate in effect during the prior fiscal year until the new rate goes into effect.

Section 6. Reduces the fee rates under Section 14(g) of the Securities Exchange Act of 1934 that apply to proxy solicitations and statements in corporate control transactions filed with the SEC.

- The section converts all Section 14(g) fees to offsetting collections, with no fees credited as general revenue of the Treasury.
- The Section 14(g) fee rates are reduced in fiscal 2002 from 1/50th of one percent, or \$200 per million, to \$125 per million of the value of the transaction.
- After fiscal 2002, the fee rates will be adjusted by Commission order to equal the fee rate under Section 6(b).
 - Linking the Section 14(g) fee rates and the Section 13(e) fee rate addressed under Section 5 of the Act (collectively known as “merger and tender offer” fee rates) to the fee rate under Section 6(b) results in an aggregate reduction in projected merger and tender offer fee collections of 50% over ten years.
 - The adjusted rates will go into effect on the later of the first day of the fiscal year or 5 days after a regular appropriation for the SEC has been enacted. If a regular appropriation has not been enacted on the first day of the fiscal year, the SEC will collect fees at the rates in effect during the prior fiscal year until the new rates go into effect.

Section 7. Eliminates the \$100 filing fee that applies to applications for qualification of certain indentures under the Trust Indenture Act of 1939. This filing fee raises negligible revenues (\$2,300 during the fiscal 2000).

Section 8. Gives the SEC the ability to match the pay and benefits of federal banking regulators to address the SEC's current staffing crisis and to reflect the increased coordination of activities among financial service regulators following enactment of the Gramm-Leach-Bliley Act of 1999.

- The pay parity provisions are based on language that the Office of the Comptroller of the Currency received in the enactment of FIRREA in 1989. Specifically, the Commission is given the authority to fix the total compensation of SEC employees, including pay and benefits.
- The guiding standard is comparability of total pay and benefits with those offered by the federal banking regulators. To further this objective, the bill requires the Commission to consult with and inform the banking regulators regarding SEC pay and benefits, as well as to inform Congress.
- A technical amendment removes the SEC from the Senior Executive Service system. This change makes the SEC consistent with federal banking regulators such as the Office of the Comptroller of the Currency, which was removed from the Senior Executive Service system when it was given pay parity with the Federal Reserve and the FDIC in 1989.
- Implementing pay parity with the federal banking regulators would require a net funding increase for the SEC of approximately \$70.9 million in fiscal 2002, with yearly adjustments for inflation thereafter.

Section 9. Provides that the Section 31 fee provisions are effective the later of October 1, 2001 or 30 days after the SEC's regular appropriation for fiscal 2002 has been enacted. The other fee provisions are effective as of October 1, 2001. The pay parity provisions are effective on the date of enactment, with the exception of the provisions removing the SEC from the Senior Executive Service system. To facilitate the transition to a new compensation system, the SEC is given the authority to eliminate the Senior Executive Service system within twelve months of enactment.